

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM M. CHUMLEY

Appeal No. 2004-1938
Application No. 09/887,741

ON BRIEF

Before COHEN, FRANKFORT, and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 4, 5, 6 and 9, all of the claims remaining in the application. Claims 7 and 8 have been canceled.

Appellant's invention relates to a trailer transported behind a towing vehicle and, more specifically, to such a trailer where entry through each end of the trailer is possible after a linear actuator located between an elongated towing member and

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the front end of the trailer moves the trailer relative to the elongate towing member in a horizontal plane to an angular position out of alignment with the towing vehicle thereby freeing the front end of the trailer from obstruction by the elongate towing member and the towing vehicle. See, particularly, Figures 1-4 of the application. Claims 1 and 5 are representative of the subject matter on appeal and a copy of those claims can be found in the Appendix to appellant's brief.

The sole prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Schurz	4,050,598	Sep. 27, 1977
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Claim 9 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellant regards as the invention.

Claims 1 through 4, 5, 6 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schurz.

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Rather than attempt to reiterate the examiner's commentary with respect to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding the rejections, we make reference to the examiner's answer (Paper No. 20, mailed April 20, 2004) for the reasoning in support of the rejections, and to appellant's brief (Paper No. 17, filed January 23, 2004) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art Schurz reference, to the declaration of Mr. William M. Chumley, filed July 16, 2003 (Paper No. 11), and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

Turning first to the examiner's rejection of claim 9 under 35 U.S.C. § 112, second paragraph, for the reasons aptly set forth by the examiner on page 5 of the answer, we will sustain this rejection. Like the examiner, we also observe that changing

"at" to -- and -- in line 3 of claim 9 would appear to overcome this rejection.

Regarding the examiner's rejection of claims 1 through 4, 5, 6 and 9 under 35 U.S.C. § 102(b) as being anticipated by Schurz, we agree with appellant's position as set forth on pages 4-8 of the brief that the hydraulic actuator (71) of Schurz pointed to by the examiner does not and cannot perform the function set forth in appellant's claims 1 and 5 of exerting a force between the elongated towing/connecting member and the front end of the trailer for pivotally moving the trailer in a horizontal plane to an angular position out of alignment in respect to the towing vehicle whereby access to the trailer is gained at each end without obstruction by the elongate towing/connecting member and the vehicle, while, as noted in claim 1, the elongated towing member "remains substantially stationary" and the towing vehicle remains connected to the bed of the trailer via the towing/connecting member.

While the hydraulic actuator (71) of Schurz is located between the elongated towing member or tongue (12) and the front end of the trailer, Schurz notes that such actuator only moves

the tongue (12) of the towing member from the trailing position seen in phantom lines in Figure 3 to the operative pivoted position seen in solid lines in Figure 3. Thus, as set forth in Schurz, the actuator (71) provides a swing-out feature for the elongated towing member (12). There is nothing in Schurz to indicate that the hydraulic actuator (71) is of such a size as to have the capability of causing pivotal movement of the trailer relative to the towing member (12) in the manner specified in appellant's claims 1 and 5 on appeal. Any conclusion on the examiner's part to the contrary is based entirely on unfounded speculation and conjecture.

Since Schurz does not disclose or teach, either expressly or inherently, each and every limitation of appellant's claims 1 through 4, 5, 6 and 9 on appeal, it follows that the examiner's rejection of those claims under 35 U.S.C. § 102(b) will not be sustained.

In summary, we note that the examiner's rejection of claim 9 under 35 U.S.C. § 112, second paragraph, has been sustained, while the rejection of claims 1 through 4, 5, 6 and 9 under

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35 U.S.C. § 102(b) as being anticipated by Schurz has not been sustained. Thus, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

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